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EXAMINER
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 14

Application Number: 09/145167
Filing Date: 9/1/98
Appellant(s): Fernandez, et al.

Dennis & Irene Fernandez, LLP
For Appellant

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed 2/6/01.

(1)   ***Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

(2)   ***Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect

or be directly affected by or have a bearing on the decision in the pending appeal is contained

in the brief.

(3) **Status of Claims**

The statement of the status of the claims contained in the brief is correct.

(4) **Status of Amendments After Final**

No amendment after final has been filed.

(5) **Summary of Invention**

The summary of invention contained in the brief is correct.

(6) **Issues**

The appellant's statement of the issues in the brief is correct.

(7) **Grouping of Claims**

Appellant's brief includes a statement that claims 1-20 stand or fall together.

(8) **Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) **Prior Art of Record**

The following is a listing of the prior art of record relied upon in the rejection of claims

under appeal.

     5,708,780   Levergood, et al.   1/13/98

5,774,357   Hoffberg, et al.   6/30/98

(10)   Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2.   Claims 1, 2, 4-8, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by

Levergood et al. (US Patent 5,708,780).

As per claim 1, Levergood et al. discloses:

a method for enhancing on-line commerce...(Abstract, lines 1-4):

determining by a server an attribute...(Col. 115, lines 9-10 and 15-16);

classifying the client...(Col. 115, lines 33-35);

directing a message by the server...(Col. 3, lines 16-20, Col. 10, lines 3-9).

wherein the message is directed adaptively or dynamically according to the attributes of a

plurality of clients classified in the set...(Col. 6, line 58-Col. 7, line 14, Col. 10, lines 24-36).

As per claim 2, Levergood et al. discloses:

the attribute comprises a...time value...(Col.. 115, lines 17-18)

As per claims 4, 5, Levergood et al. discloses:

receiving an attribute signal...(Col. 115, lines 9-10)

the attribute is provided in a memory, and the client is classified by comparing...the client

is classified in the set according to a determined substantial similarity.../transmitting the attribute

signal...(Col. 115, lines 32-34).

As per claims 6 and 7, Levergood et al. discloses:

determining by the server a second attribute...(Col. 115, lines 17-18);

classifying the client in a second set...(Col. 115, lines 32-34)

directing a second message by the server...(Col. 3, lines 16-20).

As per claims 19 and 20, Levergood et al. discloses:

receiving an attribute signal...(Col. 115, lines 9-10)

transmitting the attribute signal...receiving...(Col. 115, lines 32-34).

As per claims 19 and 20 Levergood et al. doesn't specifically disclose determining a second

attribute of a second or third client, however, this feature is inherent with the system because in a

client-server environment, multiple clients are connected to a server and are interchangeable. The

client that has interactions with the server can be substituted for another client in the network.

As per claims 4, 5, 6, 7, 19 and 20 Levergood et al. doesn't specifically disclose

determining a second attribute of a second or third client, however, this feature is inherent with

the system because in a client-server environment, multiple clients are connected to a server and

are interchangeable. The client that has interactions with the server can be substituted for another

client in the network.

As per claim 8, Levergood et al. discloses:

the message comprises a commercial offering, an application program...(Abstract, lines 4-

7).

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

4.   Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levergood et al. in

further view of Hoffberg et al. (US Patent 5,774,357).

As per claim 3, Levergood et al. fails to teach the following, however Hoffberg et al.

discloses:

the attribute is provided by one or more client sensor/receiving an attribute signal...(Fig.

26, [2602], Col. 95, lines 64-66).

It would have been obvious to one of ordinary skill in the art to provide the attributes by client

sensors because this is the type of device needed to provide the impulse necessary for the

detection of client characteristics.

5.   Claims 9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffberg et

al. (US Patent 5,774,357) in further view of Levergood et al. (US Patent 5,708,780)

As per claims 9 and 13, Hoffberg et al. discloses:

an interface...(Abstract, line 4);

a processor...(Col. 95, line 61-63);

a sensor...(Col. 95, line 64-66);

wherein the interface is accessible by a server...(Col. 84, lines 8-25 [control])

whereby the processor may provide the network access to a signal generated by the

sensor...(Col. 25, lines 46-55 and Col. 26, lines 57-67).

Hoffberg et al. doesn't specifically disclose accessing a second signal generated by the sensor,

however, this feature is inherent with the system because the user characteristics are determined

by signals generated by the client and since there is more than one characteristic, more than one

signal will be generated.

Hoffberg, et al fails to teach the following, however Levergood, et al discloses:

according to a plurality...associated with the classified set...(Col. 6, line 58-Col. 7, line 14,

Col. 10, lines 24-36).

It would have been obvious to one of ordinary skill in the art to incorporate the idea of

associating the classified set into adaptively or dynamically directing the network signal according

to the generated sensor signals because in order to direct these type of signals correctly and

efficiently, they need to be classified or grouped in a specific order.

As per claim 10, Hoffberg et al. discloses:

the generated signal represents a...time value...(Col. 23, lines 51-53, [frequency]).

As per claims 11 and 12, Hoffberg et al. discloses:

the generated signal is stored in a database...the generated signal is compared with the other generated signal...(Col. 95, lines 1-25).

As per claim 14, Hoffberg et al. discloses:

the network signal comprises an...application program...(Abstract, lines 2-4).

As per claim 15, both Levergood, et al and Hoffberg et al. fail to disclose:

the sensor comprises a global positioning satellite system...

Official notice is taken that it is old and well known in the client-server art to have a sensor which comprises a GPS. It would have been obvious to one of ordinary skill in the art to have a sensor which comprises a GPS because it is necessary for one to locate the position of the client in order to determine attributes since this information can change according to location.

As per claim 16, Hoffberg et al. fails to disclose the following, however Levergood et al. discloses:

the interface further comprises a web browser...(Abstract, lines 1-7).

It would have been obvious to one of ordinary skill in the art to have a web browser on an interface because this is the most common type of application used in a client-server environment which makes system interaction and network access easier.

As per claim 17, both Levergood et al. and Hoffberg et al. fail to teach the following:

the network access through the web browser application is secured y the sensor determining a genetic identification..

Official notice is taken that it is old and well known in the client-server art for the web browser to

determine a genetic identification of a user. It would have been obvious to one of ordinary skill in

the art for the web browser to determine a genetic identification of a user for marketing and

marketing analysis purposes.

As per claim 18, Hoffberg et al. fails to disclose the following:

the interface sends a transaction signal in response...

Official notice is taken that it is old and well known in the client-server art to send a transaction

signal in response to the network signal. It would have been obvious to one of ordinary skill in

the art to send a transaction signal in response to the network signal because this is how one can

determine if the attributes were successfully received.

(11)   Response to Argument

I.   As per the rejection of claims 1, 2, 4-8, 19 and 20 under 35 U.S.C. 102(b), the rejections

are maintained due to appellant's unpersuasive argument as set forth in section VIII of this action.

The examiner disagrees with appellant's assertion that the Levergood, et al reference fails

to disclose, teach or suggest expressly recited elements of the appellant's claimed invention. The

appellant argues that the Levergood, et al reference describes an "Internet Server Access Control

and Monitoring System" which pertains fundamentally to a client-initiated networking technique

for "processing service requests from a client to a server" and that this reference fails to teach a

proactive approach of adaptive or dynamic directed transactions for a networked client group

where the group message has one or more attributes which are classified in a group registry with

contextual mapping. However, the examiner disagrees. The examiner feels that the Levergood, et al reference describes the above stated elements by disclosing that the "Merchant server 603 returns this information in Message 4. The server 602 might have returned a Web page to the client to provide an appropriate link to the required document. However, because server 602 makes a translation to a final URL and sends a REDIRECT rather than a page to client 601, *the document of message is obtained without any user action beyond the initial dial input*" (Col. 10, lines 3-9). In other words, all the user has to do is provide an identifier to access the server, and the document is automatically accessed without the user specifying the document he or she wants. The URL is automatically constructed by the browser through the identifier (See Col. 9, lines 7-20). In Levergood, et al, the dial input is used only for server access, not for the request of a document. Furthermore, the examiner feels that Levergood, et al teaches that the merchant servers can send messages (Web Pages) to users according to groups. For example, Levergood, et al discloses that "A priority gold" number could be directed to a controlled page URL that would first authenticate the user belonging to the gold users group, and then would provide access to the "priority gold page" (see Col. 10, lines 30-33). Obviously, users in the "priority gold group" would have access to a certain URL because of certain attributes. Levergood, et al also discloses contextual mapping by having the "priority gold group" directed to the "priority gold page". In this example "gold" triggers the retrieval of certain pages.

The appellant also argues that the primary motivation of the present invention is to address a commercial need for improving on-line commerce through the Internet particularly

with respect to enabling unsolicited direct marketing of messages or signals to multiple targets

or clients groups, which according to the appellant is not addressed by Levergood, et al.

However, the examiner believes that Levergood, et al can be uses to improve on-line

commerce as well since Levergood, et al's disclosure is directed towards the present invention

as disclosed above in the preceding paragraph.

As per the rejection of claims 3 and 9-18 under 35 U.S.C. 103, the rejections are

maintained due to appellant's unpersuasive argument as set forth in section VIII of this action.

The examiner disagrees with appellant's assertion that the Levergood, et al reference

fails to disclose the elements of appellant's claimed invention as discussed above in the

preceding paragraphs. Furthermore, the appellant submit that the Hoffberg, et al reference

fails to disclose the recited element of appellant's claimed invention namely "directed" group

messaging or signaling as well as "contextual mapping" of the directed group message or

signal. Appellant argues that there is not motivation to combine the Levergood, et al and

Hoffberg, et al references. However, the examiner believes that the combination of *both*

Levergood, et al and Hoffberg, et al discloses "directed" group messaging or signaling as

well as "contextual mapping" of the directed group message or signal. Furthermore, the

examiner feels that this combination is valid because both references are directed towards the

retrieval of data through the use of databases in a network environment.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

A.R.B.
April 24, 2001

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